

## Client Services Policy Manual

Policy Number: **RE-10**  
Subject: **Termination After Re-employment**  
Chapter: **Return to Work and Rehabilitation**

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### Policy Statement

Where a worker is terminated within six months of re-employment, WorkplaceNL will presume that the employer has not fulfilled the re-employment obligation. WorkplaceNL must ensure that the work cessation is, in fact, a termination (i.e. severing the employment relationship) and not some other temporary cessation that is not intended to be a termination.

To rebut this presumption, the employer must show that the termination of the worker's employment was not related to the injury.

WorkplaceNL is not required to consider a request by a worker who has been re-employed and whose employment is terminated within six months where the request is made more than three months after the date of termination of employment.

When referencing any of the return to work policies (RE-01 to RE-11 and RE-18), it is important to recognize the responsibilities of the workplace parties within the context of the complete return to work process. Therefore, the whole return to work model must be considered in its entirety and not only the specific guidelines under an individual policy.

### General

If the facts do not support the employer's decision to terminate the worker, WorkplaceNL will presume that the employer breached the re-employment obligation.

The presumption does not change the obligation of WorkplaceNL to conduct the investigations and inquiries necessary to make informed decisions.

To determine if the employer is in breach of the re-employment obligation, WorkplaceNL will examine:

- i. the terms of the collective agreement in conjunction with the employer and local union officials (refer to policy RE-11 "Re-employment Provisions and Collective Agreements"), and/or
- ii. pre-existing written company policy,
- iii. established company practices, and/or
- iv. other relevant evidence.

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The employer must demonstrate sufficient evidence to rebut the presumption.

### **Termination after six months of re-employment**

Where a worker is terminated more than six months after re-employment, the presumption does not apply and a determination must be made as to whether the employer is in breach by reviewing the circumstances of the termination.

### **Consequences of a Breach**

If WorkplaceNL determines that the employer has not fulfilled the re-employment obligation, a re-employment penalty will be levied and re-employment payments will be made to the worker (refer to policy RE-09 "Re-employment Penalties and Payments").

### **Exceptional Circumstances**

In cases where the individual circumstances of a case are such that the provisions of this policy cannot be applied or to do so would result in an unfair or unintended result, WorkplaceNL will decide the case based on its individual merits and justice. Such a decision will be considered for that specific case only and will not be precedent setting.

### **Effective Date**

This policy applies to injuries occurring on or after January 1, 2002 other than injuries to construction workers defined by Policy RE-19 "Construction Industry". For a worker who performs construction work and an employer who is engaged primarily in construction work as defined by Policy RE-19 "Construction Industry", the re-employment obligation under this policy applies to injuries occurring on or after January 1, 2003.

**Reference:** *Workplace Health, Safety and Compensation Act (the Act), Section 89.1*  
*Policies: RE-01 through RE-11*  
*RE-18 Hierarchy of Return to Work and Accommodation*

### **Amendment History**

<i>Original Effective Date</i>	2002 01 01
<i>Revision #1</i>	2002 06 26
<i>Revision #2</i>	2004 07 22